

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

HUS HARI BULJIC INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATE OF SEDIKA
BULJIC, HONARIO GARCIA INDIVIDUALLY AND
AS ADMINISTRATOR OF THE ESTATE OF
REBERIANO LENO GARCIA, AND ARTURO DE
JESUS HERNANDEZ AND MIGUEL ANGEL
HERNANDEZ AS CO-ADMINISTRATORS OF THE
ESTATE OF JOSE AYALA,

PLAINTIFFS,

v.

TYSON FOODS, INC., TYSON FRESH MEATS,
INC., JOHN H. TYSON, NOEL W. WHITE, DEAN
BANKS, STEPHEN R. STOUFFER, TOM BROWER,
MARY A. OLEKSIUK, ELIZABETH CROSTON,
TOM HART, HAMDIA BEGANOVIC, JAMES
COOK, RAMIZ MUHELJIC, GUSTAVO CABAREA,
PUM PISNG, ALEX BUFF, WALTER CIFUENTES,
MUWI HLAWNCEU, CODY BRUSTKERN, MARK
SMITH, AND JOHN/JANE DOES 1-10,

DEFENDANTS.

Case No. 6:20-cv-02055

**RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTIONS TO DISMISS**

This matter is before the Court on motions to dismiss filed by Tyson Foods, Inc. and Tyson Fresh Meats, Inc. and by the Individual Defendants pursuant to Federal Rule of Civil Procedure 12(b)(6). ECF Nos. 23, 24. Plaintiffs responded by filing a motion for leave to amend the complaint. ECF No 35. As follows, both motions to dismiss should be denied without prejudice as moot.

“It is well-established that an amended complaint supersedes an original complaint and renders the original complaint without legal effect.” *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000) (citing *Washer v. Bullitt County*, 110 U.S. 558, 562 (1884)). Motions to

dismiss directed at an original complaint are rendered moot by an amended complaint. *Emory Dry Ice, Inc. v. Stewart*, No. 4:20-CV-0087-JAJ, 2020 WL 2210863, at *1 (S.D. Iowa May 1, 2020) (Because plaintiffs filed an amended complaint after defendants filed a motion to dismiss the original Complaint, the motion to dismiss is moot.); *Onyiah v. St. Cloud Univ.*, 655 F. Supp. 2d 948, 958 (D. Minn. 2009) (same); *Benjamin Scott Avery v. Boyd Bros. Transportation*, 2013 WL 11326558, at *1 (W.D. Mo. Aug. 21, 2013) (same). Further, “a motion to amend the complaint ‘renders moot’ a pending motion to dismiss.” *Tyler v. Hayward*, No. 8:09CV122, 2009 WL 5033965, at *1 (D. Neb. Dec. 14, 2009) (quoting *Pure Country, Inc. v. Sigma Chi Fraternity*, 312 F.3d 952, 956 (8th Cir. 2002)). In *Pure Country*, the Eight Circuit held that it is “plainly erroneous” as a procedural matter to rule on a motion to dismiss an original complaint before considering a motion to amend the complaint. 312 F.3d at 956. “If anything,” the court explained, the “motion to amend the complaint rendered moot [defendant’s] motion to dismiss the original complaint.” *Id.* Here too Plaintiffs’ motion to amend the complaint rendered moot Defendants’ motions to dismiss.

Defendants’ motions to dismiss should be denied without prejudice as moot.

DATED this 6th day of November 2020.

/s/ Thomas P. Frerichs
Thomas P. Frerichs (AT0002705)
Frerichs Law Office, P.C.
106 E. 4th Street, P.O. Box 328
Waterloo, IA 50704-0328
319.236.7204 / 319.236.7206 (fax)
tfrerichs@frerichslaw.com

John J. Rausch
Rausch Law Firm, PLLC
3909 University Ave., P.O. Box 905
Waterloo, IA 50704-0905
319.233.35557 / 319.233.3558 (fax)
rauschlawfirm@dybb.com

Mel C. Orchard, III
G. Bryan Ulmer, III
Gabriel Phillips
The Spence Law Firm, LLC
15 S. Jackson Street
P.O. Box 548
Jackson, WY 83001
307.337.1283 / 307.337.3835 (fax)
orchard@spencelawyers.com
ulmer@spencelawyers.com
phillips@spencelawyers.com

Attorneys for the Plaintiffs

I hereby certify that on this 6th day of November 2020, a true and correct copy of the above and foregoing Response in Opposition to Defendants' Motions to Dismiss was served via CM/ECF Electronic Transmission on the following:

Kevin J. Driscoll
Finley Law Firm, P.C.
699 Walnut Street, Suite 1700
Des Moines, Iowa 50309
Email: kdriscoll@finleylaw.com

Christopher S. Coleman
Perkins Coie LLP
2901 N. Central Avenue
Suite 2000
Phoenix, Arizona 85012
Email: CColeman@perkinscoie.com

Mary Gaston
Perkins Coie LLP
1201 Third Avenue
Suite 4900
Seattle, Washington 98101-3099
Email: MGaston@perkinscoie.com

Attorneys for the Defendants

/s/ Thomas P. Frerichs
Thomas P. Frerichs
Frerichs Law Office, P.C.